REMARKS

Claims 1-27 are currently pending in the application. Claims 1, 12, 22, 24, and 26 are independent claims and claims 2-11, 13-21, 23, 25, and 27, respectively, depend from the independent claims. The Applicants request reconsideration of the claims in light of the following remarks.

Claims 1, 2, 9-12 and 19-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by Berland US Patent 4,142,072 (Berland). According to the Office Action Berland discloses all the features set forth in all of Applicants' independent claims 1, 12, 22, 24, and 26. Applicants respectfully traverse the rejections.

Applicants respectfully submit that with regard to claims 1 and 12, Berland fails to at least disclose circuitry in general, and in particular, circuitry for sensing whether an actuator is in a first position or a second position, and circuitry for selecting an output based upon the position of the actuator switch sensed by the circuitry for sensing the position of the actuator switch.

The Office Action has suggested that Berland discloses, in Fig. 3, circuitry in general, and in particular, circuitry for sensing whether the actuator is in a first position or a second position and circuitry for selecting an output based upon the position of the actuator switch sensed by the circuitry for sensing the position of the actuator switch. Applicants disagree.

Berland discloses in col. 2, lines 24-26 that Fig. 3 merely illustrates a simplified acoustic equivalence diagram for a hearing aid with a slide closing a rear opening. Further study reveals that Berland, while using symbols that are common to electric circuit diagrams in Fig. 3, is not

disclosing circuitry at all, but rather an abstract formula for an optimum acoustic design of a microphone sound environment.

For example, Berland defines the features of Fig. 3 at col. 2, lines 53-61, wherein $\mathbf{P_i}$ is the sound pressure at the microphone front sound port (not a power supply as the symbol in the diagram is ordinarily understood by those having skill in the art of circuitry), $\mathbf{C_F}$ is the front cavity compliance (not a capacitor), $\mathbf{C_M}$ is the membrane compliance (not a capacitor), $\mathbf{C_B}$ is the rear cavity compliance (not a capacitor), **L** is the mass of air in the sound passageway (not an inductor), and **R** is the loss due to the sound pressure in the sound passageway (not a resistor as the symbol in the diagram is ordinarily understood by those having skill in the art of circuitry).

Berland continues to define the reference symbols in Fig. 3 with Fig. 4 and col. 2, line 63 through col. 3, line 7, where Berland discloses that the acoustic values **L** and **R** for the sound passageway depend on the dimensions of the cross section of the passageway, wherein these dimensions are **a** and **b**: and

$$\mathbf{R} = \alpha/(\mathbf{a}^3\mathbf{b}) \qquad \mathbf{L} = \beta/(\mathbf{ab})$$

where α and β are constants. Berland further discloses that by appropriately selecting (by a hearing aid designer) the proportion **a/b** it is possible to determine the relationship between **R** and **L** and thus to give the total acoustic impedance of the passageway a certain optimal value keeping the frequency characteristic unchanged, whether the microphone system is working with or without directional reception.

In light of the teaching of Berland above, Applicants respectfully assert that Berland does not teach circuitry as set forth in Applicants' independent claims 1 and 12. Moreover,

Applicants assert that Berland does not disclose circuitry for sensing (*even via sound pressure*, emphasis added) whether an actuator switch is in a first or second position. Berland fails to teach sensing of any kind. Additionally, Applicants assert that Berland fails to disclose circuitry for selecting an output based upon a position of the actuator switch sensed by the circuitry. Berland fails to disclose selecting an output of any kind.

For at least the reasons set forth above, Applicants assert that Berland fails to disclose every feature set forth in Applicants' independent claims 1 and 12, thus claims 1 and 12 are allowable over the cited reference. Applicants request that the rejection of claims 1 and 12 be withdrawn.

Regarding independent claims 22, 24, and 26, Applicants assert that Berland also fails to disclose every feature of claims 22, 24, and 26. Applicants set forth in independent claims 22, 24, and 26, methods of operating a microphone, wherein each of the methods at least set forth sensing and selecting an output based upon the sensing. As recited above, Berland fails to disclose the elements, e.g., circuitry in general, circuitry for sensing a position, and circuitry for selecting an output based upon the sensing.

Therefore, because Berland fails to disclose the elements necessary to perform the functions of sensing and selecting, Berland must also fail to disclose the function performed by the elements, i.e. sensing and selecting. As recited above, Berland merely discloses an abstract formula for design of a microphone environment whereas the Applicants set forth both the functions and the elements for performing the functions of sensing, and selecting an output based upon the sensing.

For at least the reasons set forth above, Applicants assert that Berland fails to disclose every feature set forth in Applicants' independent claims 22, 24, and 26, thus claims 22, 24, and 26 are allowable over the cited reference. Applicants request that the rejection of claims 22, 24, and 26 be withdrawn.

Dependent claims 3, 4, 7, 13, 14, and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berland in view of Ruegg US Patent 3,875,349 (Ruegg). Applicants respectfully traverse the rejections.

Applicants submit that in light of the arguments provided above with respect to the rejection of independent claims 1 and 12, that the rejection of dependent claims 3, 4, 7, 13, 14, and 17 over the proposed combination of Berland and Ruegg is now moot, thus dependent claims 3, 4, 7, 13, 14, and 17 are also allowable over the cited references. Applicants request that the rejection of claims 3, 4, 7, 13, 14, and 17 be withdrawn.

Dependent claims 5, 6, 8, 15, 16, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berland in view of Killion US Patent 6,101,259 (Killion). Applicants respectfully traverse the rejections.

Applicants submit that in light of the arguments provided above with respect to the rejection of independent claims 1 and 12, that the rejection of dependent claims 5, 6, 8, 15, 16, and 18 over the proposed combination of Berland and Killion is now moot, thus dependent claims 5, 6, 8, 15, 16, and 18 are also allowable over the cited references. Applicants request that the rejection of claims 5, 6, 8, 15, 16, and 18 be withdrawn.

CONCLUSION

Applicants submit that based on at least the foregoing, all pending claims are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, Applicants invite the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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